Supreme Court, U. S.
FILED
MAR 1 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1976

NO. 76-1693

JERRA MC CREA LYLES

and

ANTOINETTE DUNN, Petitioners

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioners, Jerra McCrea Lyles and Antoinette Dunn, pray that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit filed in the above entitled case on April 29, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is an unreported per curiam decision and appears at Appendix A

to this Petition, infra pp. A.1 - A. 3. The opinion of the Honorable Joseph H. Young, District Judge is found at Appendix B to this Petition, infra pp. A. 3 - A. 15.

JURISDICTION

The judgment of the United States Court of Appeals sought to be reviewed was filed on April 29, 1977. The jurisdiction of this Court is invoked under 28 U.S.C.

QUESTION PRESENTED

Did the Government fail to satisfy the requirement of 18 U.S.C. 2518 (1) (c).

CONSTITUTIONAL PROVISIONS INVOLVED

This case and the issue presented involves the Fourth Amendment to the Constitution of the United States which provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATUTORY PROVISIONS INVOLVED

This case and the issue presented involves the statutory provision of Title 18 U.S.C. Section 2518 (1) (c):

" § 2518. Procedure for interception of wire or oral communications

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous. "

STATEMENT OF THE CASE

On February 4, 1976, the Grand Jury for the United States District Court for the District of Maryland handed up a thirty count indictment charging the Petitioners, Jerra McCrea Lyles and Antoinette Dunn, and others with violations of Title 21, U.S.C. The trial of these cases was commenced before the Honorable Joseph H. Young on May 3, 1976, with the aid of a jury. On May 28, 1976, the jury returned verdicts of guilty as to Mr. Lyles on all but counts nine, fourteen and sixteen of the instant indictment. Petitioner Dunn was convicted on count one only.

On July 28, 1976, the Petitioner, Lyles, was committed to the custody of the Attorney General or his authorized representative for

imprisonment for a period of fifteen (15) years and a special parole term of forty (40) years was imposed pursuant to U.S.C., Title 21, Section 841 (b) (1) (a) as to each of Counts Nos. 1 and 2, said sentences imposed to run consecutively, making a total term of imprisonment of thirty (30) years and a total special parole term of eighty (80) years; for a period of fifteen (15) years and a special parole term of forty (40) years imposed pursuant to U.S.C., Title 21, Section 841 (b) (1) (a) as to each of Counts Nos. 3, 4, 5, and 6 and 7, sentences imposed as to each of Counts Nos. 3, 4, 5, 6 and 7 to run concurrently with each other and concurrently with Counts Nos. 1 and 2; for a period of four (4) years as to each of Counts Nos. 8, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29, sentences imposed as to each of said counts to run concurrently with each other and concurrently with Counts Nos. 1 and 2; for a period of thirty (30) years as to Count No. 30, said term of imprisonment to run concurrently with terms of imprisonment imposed as to each of Counts Nos. 1and 2, making a total term of imprisonment of thirty (30) years. Upon a jury verdict of not guilty as to each of Counts Nos. 9, 14 and 16, a judgment of acquittal was entered as to each of said counts by the Court, Order (Young, J.) dated July 23, 1976.

The Petitioner, Dunn, was sentenced to the custody of the Attorney General or his authorized representative for imprisonment for a period of six (6) years, with a special parole term of eight (8) years. Furthermore, it was provided that two (2) years of the aforementioned sentence should

run consecutive to any other sentence the Petitioner would be serving, and the balance of four (4) years should be concurrent with any other sentence.

It is from those sentences that the Petitioners entered the notice of their appeals to the Clerk of the United States District Court for the District of Maryland. Thereafter, on April 7, 1977, the Petitioners argued their respective cases before the United States Court of Appeals for the Fourth Circuit. On April 29, 1977 in a per curiam opinion, the judgments of the trial court were affirmed.

REASONS FOR GRANTING THE WRIT

The Government failed to satisfy the requirements of 18 U.S.C. 2518 (1) (c).

Title 18 Section 2518 (1) (c) United States Code reads as follows:

> "(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the Applicant's authority to make such application. Each application shall include the following information:
>
> (c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."

Obviously, the provisions of Title 18 Section 2518 (1) (c) were intended by its drafters to be read not in the conjunctive but rather in the disjunctive. Therefore, the "judge of competent jurisdiction" in the instant case, the Honorable C. Stanley Blair, must determine only that one of the three requirements of 2518 (1) (c) have been complied with.

The application and accompanying affidavit of Special Agent William Joseph Miller in support of the Government's request for the wire tap of telephone number 301-675-5848 is a trifurcated one. Part III of the Miller affidavit concerns itself with the Petitioners' request for Writ of Certiorari to this Honorable Court, that is the "unavailability of other means of investigation".

From the outset, it should be noted that at no point in the affidavit of Special Agent Miller is there even a scintilla of evidence on which the authorizing judge could have determined that normal investigating techniques would be "too dangerous". The authorizing judge was then left with having to select but from two remaining alternatives to prove compliance with 2518 (1) (c) that is, have other investigative procedures been tried and failed or, why they appear unlikely to succeed if tried.

In the opinion of Mr. Justice White in United States v. Giordano, 94 S. Ct. 1820, 1826 (1974) it was said in speaking of the Omnibus Crime Control and Safe Streets Act of 1968 that "Congress legislated in considerable detail in

providing for applications and orders authorizing wiretapping and evinced the clear intent to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the Applicant must state and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous". As further enunciated in Giordano, the necessity for strict compliance with statute in a wire tap situation stems just as much from precedent setting example of condoning laxity which could lead to further laxity in years to come, with serious consequences to personal liberties, as from concern over rights of an accused in a given case. Certainly, the Government would have this Honorable Court condone the routine employment of wire interceptions. In fact, one could easily glean from the trial of the instant cases that there could exist no successful prosecution of narcotic nor bookmaking offenders without an interception of wire or oral communications. As stated in United States v. Kerrigan, 514 F. 2d 35 (1975 C. A. Cal.), a "boilerplate recitation of difficulties of gathering usable evidence in bookmaking prosecutions is not a sufficient basis for granting a wiretap order". In the instant cases, such was precisely the efforts of the Government. Employ only those means that we know will not succeed, then request permission for authority to intercept. As was stated by District Judge Skopel

in United States v. Kalustian, 529 F. 2d 585, 589 (1976, C. A. Ninth Cir.), " [I]n effect the Government's position is that all gambling conspiracies are tough to crack, so the Government need show only the probability that illegal gambling is afoot to justify electronic surveillance". Here too the Government would have this Court conclude that all narcotics cases are similar in nature and, only by wire interception can they be assured of a successful prosecution.

The affidavit of Special Agent Miller in support of the Government's application for an order authorizing the interception of wire communications (Appendix D pp. A. 33 - A. 39) details the efforts of Agent Miller and other agents in their investigation of the Petitioners. It seems abundantly clear that their efforts proved highly successful and not as required by 2518 (1) (c) the failure or fruitlessness of normal investigative techniques. To begin with, Agent Miller, in the very affidavit called to in support of the Government's request for wire interception speaks of three confidential sources of information. One of them, Source 2 was highly successful in penitrating Lyles' alleged operation. On no less then five occasions, Source 2 had telephoned or personally talked with Lyles concerning alleged narcotic transactions and, on two of those occasions, according to Miller's affidavit, Source 2 was wired for sound. Although Agent Miller concludes in his affidavit that " [T]his cooperating individual, Source 2 can only purchase narcotics from Lyles and is not in a position to infiltrate the Lyles' organization or attempt to determine Lyles' source of supply, major associates

or customer without arousing much suspicion", he did very little to establish the accuracy of his conclusion.

Agent Miller and his associates finally managed, after five years of intense undercover investigation, to introduce a cooperative individual into Lyles' inner circle and yet, absolutely no attempt is made by that Source to gain the confidence of Lyles to the extent of gaining information about Lyles' alleged network of drug activities. Certain narcotics and narcotic related transactions were developed between Lyles and Source 2; However, the Government and Agent Miller failed, perhaps intentionally so, to carry Source 2's cooperation too far. That is, if Source 2 had shown even a minim of success in his dealings with Lyles, in all probability, the Government's request for a wire intercept order would have been denied. What then is the congressional purpose of wire tap legislation when read in conjunction with 2518 (1) (c)? As stated in United States v. Lanza, (M. D. Fla. 1973) 356 F. Supp 27, 30:

> "The purpose of the exhaustion requirement is not to foreclose the use of electronic surveillance until the state has exhausted every possible means of obtaining a viable case against the subjects, but merely to inform the authorizing magistrate or judge of the nature and progress of the investigation and the difficulties inherent in the use of normal techniques."

Here, not only did the Government fail to exhaust every possible means which obviously

is not the criterion for issuance of the order but, more importantly they failed to employ to the fullest extent the limited means which they chose to employ prior to their request for an order to intercept. Certainly, while an order for wire interception is not an investigative method of last resort, neither is it one to be routinely employed nor, is it intended as a short cut method of quickly culminating a Governmental investigation. Agent Miller's reasoning as to why Source 2's efforts would be non productive were nothing more than bald conclusions, precisely the same type of reasoning that was objected to in United States v. Curreri, 388 F. Supp 607 (1974 Md.) and Kalustian, supra. It seems that Source 2, a person who obviously had successfully gained Lyles confidence was not deployed by the Government to ascertain the total network of the Lyles operation. It is not sufficient for Agent Miller to have concluded, as he did that Source 2 would have been totally unsuccessful in his bid, if attempted, to identify the cast of the Lyles organization. If, according to Miller, Source 2 was an inutile tool in their investigation why even bother to have him establish contact with Lyles? Certainly, the legislative intent of Title III and more specifically 2518 (1) (c) was not to simplify a Governmental investigation, it was designed to assist their investigation but only after a good faith demonstration that normal investigative methods have failed or seem unlikely to succeed. In the present cases, the Government tried, succeeded and certainly would have continued in their success but for their premature request for an order of wire interception.

At page 14 of the Government's affidavit, (Appendix D pp. A. 35) in speaking of a second

method of normal investigative techniques, Agent Miller made the following comments:

> "Lyles' residence, 1213 North Ellwood Avenue, is in a densely populated black residential area with numerous bars located on corners surrounding the residence. Surveillance of this area is impossible due to the positioning of the residence and the fact that Lyles is a long time resident of this area and has numerous friends and associates who frequent the establishments throughout the immediate area. In addition to this, Lyles, being involved in narcotic activities for a number of years, has developed counter-surveillance driving techniques that inhibit any attempt at vehicular surveillance to the point of jeopardizing the investigation."

The Petitioners contend that the above quoted portion of Agent Miller's affidavit is false. Surveillance of the Lyles' residence was anything but impossible. To be sure, on numerous occasions prior to and during the tap of Lyles' telephone, the Government surveilled the Lyles' residence.

In short, Agent Miller's comments sum up the Government's position in this matter. "Surveillance by itself does not do anything. It shows that certain people met with certain people, and that is it. We don't know why they met, and they come to the house, they leave but we don't know why they came to the house and left, and the purpose, or the way to find that out is through the Title 3,

and that is what allowed us to know why they were there". Again, through the testimony of Agent Miller, we are confronted with a situation (surveillance) whereby Miller merely assumes that his surveillance would be non productive. Furthermore, to compound matters, Miller avers that surveillance of Lyles' residence and automobile travel is impossible. Such is not the case. To the contrary, Miller and his associates were most successful in surveilling Lyles both prior to and during the lower court's order to intercept. The language of Miller then is false, surveillance was not impossible. Again, as in Kalustian, supra, Miller's assertions, besides being false, are nothing more than bald allegations. Not only was the physical surveillance of Lyles, his residence and his vehicle highly successful, but moreover, Miller and his associates successfully employed both video tape and aerial surveillance techniques.

In the case of United States v. James, 494 F.2d 1007 (1964, D.C.C.A.):

> We consider and apply section 2518 (3) (c) in light of the discussion of that provision in S. Rep. No. 1097, 90th Cong., 2d Sess. 101, U.S. Code Cong. & Admin. News 1968, pp. 2112, 2190 (1968):
>
> This requirement is patterned after traditional search warrant practice and present English procedure in the issuance of warrants to wiretap by the Home Secretary. Citation omitted. The judgment would involve a consideration of all the facts and circumstances. Normal

> investigative procedure would include, for example, standard visual or aural surveillance techniques by law enforcement officers, general questioning or interrogation under an immunity grant, use of regular search warrants, and the infiltration of conspiratorial groups by undercover agents or informants. Merely because a normal investigative techniques is theoretically possible, it does not follow that it is likely. [Citations omitted.] What the provision envisions is that the showing be tested in a practical and commonsense fashion. [Emphasis added.]

At Appendix D pp. A.36 of the Miller affidavit, the affiant speaks of his familiarity with the Lyles' investigation and his attempts "during the length of his investigation to utilize every possible investigative means available to a law enforcement agency in attempting to penetrate and immobilize the Lyles' organization and Lyles' sources of supply". Thereafter, Agent Miller speaks of but two investigative techniques employed by him in exhaustive attempt to crack the Lyles case, (1) infiltration and (2) surveillance. He contends that the latter was impossible and the former unproductive. The Petitioners contend that not only was Agent Miller inaccurate on both counts but, more importantly he failed to utilize either method to its fullest extent. Furthermore, Agent Miller did not as he stated, "utilize every possible investigative means available". He offered no one immunity, used no search warrant prior to the tap, refused to employ proper surveillance techniques and

chose not to employ the use of the pen register device prior to his request for court ordered wire interception. The Petitioners are fully cognizant of the fact that every investigation need not be employed prior to the issuance of an order to intercept; However, as stated in Kalustian, supra pp. 588 and 589:

> [2] Title III was written to create limited authority for electronic surveillance in the investigation of specified crimes thought to lie within the province of organized criminal activity. History, pp. 2153-2163. It was designed to conform to prevailing constitutional standards. Berger v. New York, 388 U.S. 41, 87 S. Ct. 1873, 18 L. Ed. 2d 1040 (1967); Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). The restraint with which such authority was created reflects the legitimate fears with which a free society entertains the use of electronic surveillance. As stated in Berger, supra, "Few threats to liberty exist which are greater than that posed by the use of eavesdropping devices". 388 U.S. at 63, 87 S. Ct. at 1885.

Obviously electronic surveillance can facilitate criminal investigation. Because other investigative techniques are usually slower and more difficult, Congress did not require exhaustion of

"all possible" investigative techniques before orders for wiretaps could be issued. United States v. Smith, 519 F. 2d 516 (9th Cir., 1975). But Title III does not allow wiretapping to replace such other techniques unless they "have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous".

[5,6] The Government failed in this case to satisfy 18 U.S.C. § 2518 (1) (c). Its application did not adequately show why traditional investigative techniques were not sufficient in this particular case. A judge reviewing a wiretap application is handicapped without such a showing. Title III and the individual's right to privacy, which it seeks to preserve, demand no less than a full and complete statement of underlying circumstances.

> [7] Mere conclusions by the affiant are insufficient to justify a search warrant, Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), or a wiretap order. More specifically, they do not provide facts from which a detached judge or magistrate can determine whether other alternative investigative procedures exist as a viable alternative."

The Petitioners contend that the Government did not adequately show why traditional investigative techniques were not sufficient in this particular case.

CONCLUSION

For the foregoing reason, the Petitioners contend that their request for Writ of Certiorari should be granted.

Harold I. Glaser

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APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 76-2185

United States of America, Appellee,

-v-

Jerra McCrea Lyles, Appellant.
a/k/a Gato
a/k/a Gatorman
a/k/a Gerald,

No. 76-2188

United States of America, Appellee,

-v-

Antionette Dunn, Appellant.
a/k/a Toni,

Appeals from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge.

Argued April 7, 1977 Decided April 29, 1977

Before WINTER, BUTZNER and HALL, Circuit Judges.

PER CURIAM:

The nine appellants were all convicted of conspiring to manufacture, distribute, and possess with intent to manufacture and distribute controlled substances. In addition, individual appellants were convicted of other crimes related to the conspiracy such as distribution of heroin, possession of heroin with intent to distribute, use of a telephone to facilitate their conspiracy, and conducting a continuing criminal enterprise. The major contentions raised on appeal are: 1) in authorizing electronic surveillance pursuant to 18 U.S.C. 2518 (1), the district court erred in finding that alternative investigative techniques were inadequate; (2) the evidence was insufficient to establish the existence of a conspiracy and to connect individual appellants with the conspiracy; (3) certain of the appellants were prejudiced by the district court's denial of their motions for severance; and (4) the district court erred in allowing the jurors to use transcripts of tapes while they were listening to the tapes.

Upon review of the record, briefs, and oral argument, we find no merit in these contentions. With respect to the authorization for electronic surveillance, the affidavit of the special drug enforcement agent provided adequate support for the district court's conclusion that "normal investigative procedures appear to be unlikely to succeed and are too dangerous to be used." Cf. United States v. Anderson, 542 F.2d 428, 431 (7th Cir. 1976). Furthermore, contrary to the appellants' contention, the evidence introduced at trial did not indicate that the affidavit was false

We also conclude that the evidence was sufficient to sustain the convictions of all the appellants, United States v. Sherman, 421 F. 2d 198, 199-200 (4th Cir. 1970), and that the district court did not abuse its discretion in denying the motions for severance. Cf. United States v. Curry, 512 F.2d 1299, 1302 (4th Cir. 1975). Finally, we hold that the district judge did not err in allowing transcripts of the intercepted tape recordings to go to the jury. Cf. United States v. Hall, 342 F.2d 849, 852-53 (4th Cir. 1965).

We find no merit in the other contentions raised on appeal.

Affirmed.

APPENDIX B

DICTATED OPINION OF THE COURT CONCERNING APPELLANT'S MOTION TO SUPPRESS EVIDENCE T. 105-117

THE COURT: The case of United States of America versus Jerra McCrea Lyles, et al, No. Y-76-083, comes before the Court at this time for a hearing on motions of several of the defendants to suppress evidence to be used by the Government. The motions concern evidence obtained as a result of a Court ordered wire tap, a search and seizure conducted pursuant to a warrant issued by this Court at 5012 Denview Way, and alleged custodial interrogations of certain defendants.

Facts: In early 1975, the Drug Enforcement Administration began conducting an investigation of a large heroin distribution ring allegedly operating in the Baltimore area by the defendants. The investigation centered on Jerra McCrea Lyles of 1213 N. Ellwood Ave., Baltimore, Md. The telephone number at this address is 301-675-5848.

In July, Drug Enforcement Administration officials determined that a Court ordered wire interception was necessary to complete their investigation of this matter.

Accordingly, Drug Enforcement Administration officials and the United States Attorney for the District of Maryland applied to this Court for an order permitting the wire interception. The request, in proper form, and signed by the Attorney General of the United States, accompanied by affidavits, was presented to Judge C. Stanley Blair of this Court on July 21, 1975. Judge Blair signed an order directing the installation of a pen register and other technical wire tap equipment was attached to Lyles' telephone.

Actual monitoring of telephone calls began on July 22, 1975, and ceased on August 7, 1975.

On August 7, 1975, the Drug Enforcement Administration, through Special Agent William Miller, sought search warrants from Judge Blair of this Court for the following premises:

(1) 5012 Denview Way, Apartment K, Baltimore, Md.

(2) 2404 Winchester Ave., Baltimore, Md.

(3) 1213 N. Ellwood Ave., Baltimore, Md.

Judge Blair signed the requested warrants, and the Drug Enforcement Administration executed them on August 7, 1975.

The issues presented on these facts by the motions of the defendants are as follows:

I. Suppression of wire tap evidence.

A. Was the interception carried out in accordance with the provisions of 18 U.S. Code, Sections 2510, et seq. ?

1. Did the Drug Enforcement Administration's affidavit contain "a full and complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear unlikely to succeed if tried, or to be too dangerous," 18 U.S. Code, Section 2518 (c).

2. Are Agent Miller and Assistant United States Attorney Radding "law enforcement officers" within the meaning of 18 U.S. Code, Section 2510.

3. Did Judge Blair's order satisfy the minimization and specificity requirements of 18 U.S. Code, Sections 2518 (4) and (5), and were these parts of the order adhered to.

B. Was there probable cause to issue the warrants, i.e., did the affidavit satisfy the Spinelli-Agualar two-pronged test?

II. Was there probable cause for the search at Denview Way, i.e., did the affidavit satisfy Spinelli and Agualar?

I. A. The wire tap - statutory claims.

1. Several defendants have argued that the affidavit presented to Judge Blair was not sufficient to justify his order for a wire interception because the affidavit did not give:

(c) . . . a full and complete statement as to whether or not investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

The Courts have read Section (1) (c) in a common sense fashion. United States v. Armocida, 515 F.2d 29, 30, (Third Circuit, 1975); United States v. Robertson, 504 F.2d 289, 293 (Fifth Circuit, 1974); In Re John Dunn, 507 F.2d 195, 196 (First Circuit 1974). Government agents need not show that all other investigative techniques have actually failed, nor need they prove to a certainty that all normal techniques will fail. The affidavit must show that they "reasonably appear unlikely to succeed if tried." See United States v. Askins, 351 F. Supp. 408 (District of Maryland, 1972); United States v. Focarile, 340 F. Supp. 1033 (District of Maryland, 1972).

On this standard, the Drug Enforcement

Administration's affidavit clearly passes muster. The affidavit indicated that certain parts of this case made other types of investigation extremely difficult. It alleged that Defendant Lyles refused to deal with those he did not know personally, that Lyles' associates had consistently refused to testify against him, that Lyles was extremely suspicious of law enforcement action (he employed counter-surveillance driving techniques and at times even suspended operations entirely), and that Lyles' neighborhood and his many contacts therein made ordinary surveillance extremely risky.

The affidavit also indicated that the Drug Enforcement Administration had attempted to infiltrate Lyles' organization with an agent, but had failed. A confidential informant, Source 2, had penetrated the organization and made controlled purchases of narcotics, but was unable to determine Lyles' customers, or his source of supply. Lyles could have been arrested, but such an arrest, absent a wire tap, would remove any chance of locating Lyles' supplier or his retailers.

The Court has no doubt that the affidavit, as just summarized, meets the requirements of Section 2518 (1) (c). Indeed, it seems remarkably similar in general form and content to the affidavit specifically approved in United States v. Bobo, 447 F.2d 974 (4th Circuit, 1973).

2. Several defendants have argued that Agent Miller and Assistant United States Attorney Radding

are not "investigative or law enforcement officers" as defined in 18 U.S. Code, Section 2510 (7). This contention is frivolous. The definition reads as follows:

(7) "Investigative or law enforcement officer" means any officer of the United States, or of a state or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, (See 2516) and any attorney authorized by law to prosecute or participate in prosecution of such offenses.

Counsel for Defendants Lyles and Dunn strenuously argue that the affidavit to Judge Blair does not meet the requirements of United States v. Kalustain, 17 Criminal Law Reporter, 2428 (Ninth Circuit, 1975). The argument is that this case is the most recent pronouncement of any Court of Appeals, and should accordingly govern this Court's determination. The Court is, of course, not bound by decisions of the Ninth Circuit Court of Appeals, but should consider them as it does all carefully reasoned expressions of other courts.

In the original opinion in Kalustain, the Court laid out the following test:

The Government must (1) inform (the Magistrates) of every technique customarily used in police work in investigating the type of offense involved, and (2) explain why each of them has either been unsuccessful or is too dangerous or unlikely to succeed because of the particular circumstances of the case.

This very stringent requirement that "every technique customarily used" must be explored was deleted in a modification of the opinion in Kalustain. See United States v. Kalustain, modified, 18 Criminal Law Reporter, 2411 (Ninth Circuit, 1975). Kalustain, as modified, requires, instead, "a full and complete statement of underlying circumstances." The opinion retains the original language concerning mere conclusions by the affiant. "Mere conclusions by the affiant are insufficient to justify a search warrant."

It is clear, from the discussion of the facts above, that the affidavit meets the Kalustain test as modified. It contains a full and complete statement of the circumstances underlying the decision to apply for a warrant. It alleges specific facts, enumerated above, which render other methods of investigation impossible or unlikely to succeed. It also details the failure of certain methods actually tried. It can, in no sense, be labeled "the mere conclusions of the affiant."

Clearly, the indictment charges offenses enumerated in this chapter (See 18 U.S. Code, Section 2516 (1) (3)), and clearly Agent Miller and Assistant United States Attorney Radding are empowered by law to investigate and prosecute these offenses.

3. Specificity and minimization.

18 U.S. Code, Sections 2518 (4) and (5) require that Court orders for wire interception be specific and that they require a minimization of the innocent communications which are monitored.

Section 2518 (4) requires the order to specify (a) the identity of the person, (b) the nature and location of the communication facility, (c) the type of communication to be intercepted, (d) the identity of the agent authorized to intercept, and (e) the time period over which interception is authorized. Judge Blair's order (No. 6 in Miscellaneous File 979) amply satisfies these requirements.

18 U.S. Code, Section (5) requires that every wire interception order shall . . . contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or, in any event, in 30 days.

Judge Blair's order contains the required provisions in the language which almost exactly tracks the statute. The order contains several specific requirements as well.

(1) Interception will terminate immediately if Lyles is not a party to the conversation unless the conversation involves a message for Lyles.

(2) The time limit is 21 days -- 9 days less than the maximum.

(3) The Assistant United States Attorney was required to report to Judge Blair thrice weekly on the progress of the tap.

Preliminary indications from the log indicate

that the minimization order was followed.

I. B. Probable cause for the tap.

Several of the defendants attack the Court order for the wire interception as not being founded upon probable cause. They focus their attack on the Miller affidavit, and claim that it does not meet the facts set out in Spinelli v. United States, 393 U.S. 410, 413, (1969), and Agualar v. Texas, 378 U.S. 108, 114 (1964).

The basic rule regarding affidavits is set out in Giorderello v. United States, 357 U.S. 480. That case stands for the proposition that the probable cause determination must be made by a neutral Magistrate, who must decide for himself the persuasiveness of the facts alleged in the affidavit, and not merely rely on the conclusions of the affiant. The case indicates also that on passing on the validity of a warrant, the reviewing court can use all and only that information which was before the Magistrate at the time of issuance. Hearsay and even multiple-level hearsay may be the basis of probable cause.

In Agualar and Spinelli, the court gave specific guidance on the evaluation of warrants based on anonymous informers. Affidavits to support such a warrant must inform the Magistrate of (1) underlying facts and circumstances from which the informant concluded that an offense had been committed, (2) underlying facts and circumstances from which the affiant concluded that the informant was reliable.

Spinelli also holds that the statements of the anonymous informer may be bolstered by independent corroborative evidence.

On these statements, the Miller affidavit is clearly sufficient. The affidavit relies on three anonymous informants and independent corroborative evidence.

Source 1. Source 1 clearly satisfies the first prong of the Agualar-Spinelli test. The affidavit indicates that Source 1 said he had purchased narcotics from Clifton Stokes, and that he had observed Lyles and Stokes converse by telephone regarding narcotic sales, and had seen an actual delivery of drugs from Lyles to Stokes (Affidavit page 4). Source 1 also satisfies the second part of the test. His credibility was attested to by his past testimony against Stokes. That testimony was corroborated by several other witnesses. The affidavit permits an independent judge to determine that the affiant had good reason to believe Source 1, and that Source 1 had ample basis for his "tip".

Source 2. Source 2 is the strongest part of the Government's argument that probable cause existed. The affidavit reveals Source 2 was equipped with a body transmitter, and made several controlled purchases of narcotics from Lyles. The purchases and the surrounding conversations were directly overheard by Affiant Miller and other Drug Enforcement Administration agents. It would scarcely be possible to imagine a more adequate showing under Spinelli and Agualar. Source 2's basis of knowledge was his actual contact with Lyles, his buys from Lyles, and his own telephone calls to Lyles. The affiant's basis of knowledge of Source 2's credibility was that all the information he gave to the Drug Enforcement Administration agents was corroborated by the body transmissions.

Source 3. Source 3's input into the warrant is negligible and need not be considered.

In addition to the confidential sources, the affidavit provides corroborating evidence. Some of the corroboration consists of the actual undercover dealings and conversations by the affiant with Antoinette Dunn. In these dealings, the affiant learned that Lyles was Dunn's source of supply. The affiant also conversed by telephone with Dunn and Lyles.

A second piece of corroborative evidence was the long distance toll record of Lyles' telephone. These records reveal that Lyles had numerous conversations with known narcotics dealers. The status of these correspondents as dealers is established in the affidavit by reference to Drug Enforcement Administration files and public arrest and conviction records.

From these various sources, it is clear beyond the slightest doubt that the affidavit contains sufficient information to allow Judge Blair to determine that probable cause existed to believe that the narcotics laws were being violated by Lyles, and that his telephone conversations would reveal further information about his dealings.

II. The search of Denview Way.

On August 7, 1975, the agents of the Drug Enforcement Administration searched several premises allegedly involved in the Lyles organization. The only search that is the subject of a suppression motion

is that of 5012 Denview Way. This motion was by Defendant Mims (also known as Allen).

The affidavit for this search warrant (also issued by Judge Blair) once again depends upon anonymous informants and other corroboration.

Source 1 was reported in the affidavit to be highly reliable. He had supplied information which was carefully corroborated by independent investigation, and by use of the body transmitter.

Source 2 is alleged by the affidavit to be reliable in that it has consistently supplied the Drug Enforcement Administration with information that was corroborated by independent sources, personal observation and Source 1's body transmitter.

Source 1 and Source 2 were ideally placed to gain the information they gave. Each was positioned directly in Lyles' residence at 1213 N. Ellwood Ave.

The substance of the affidavit is that on several occasions Lyles was observed by Drug Enforcement Administration agents to enter and leave the Denview Way address. Immediately upon returning to his Ellwood Ave. address, Source 2, and occasionally Source 1, (positioned at that address) reported that Lyles was prepared to engage in large scale narcotics sales. The natural inference is that 5012 Denview Way, Apartment K, contained, from time to time, narcotics or narcotics paraphernalia. There was clearly probable cause for the search.

Defendant Mims also objects that she was not present during the search. This argument is

frivolous; the Fourth Amendment does not guarantee to defendants the right to be present when their premises are searched pursuant to lawful warrants.

For the foregoing reasons, the motions referred to herein be and the same are hereby denied.

APPENDIX C

APPLICATION OF THE UNITED STATES OF AMERICA IN THE MATTER OF AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

APPLICATION OF THE UNITED STATES OF AMERICA IN THE MATTER OF AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS	* Application

* * * * * * * * *

Andrew Radding, Assistant United States Attorney for the District of Maryland, being duly sworn, states:

This application is submitted in support of an order authorizing the interception of wire communications. This application has been submitted

only after lengthy discussion concerning the necessity for such an application with agents of the Drug Enforcement Administration, United States Department of Justice.

1. He is an "investigative or law enforcement officer - of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code, - that is, he is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable Edward H. Levi, has authorized this application for an order authorizing the interception of wire communications. Attached to this application as Exhibit A are the letters of notification of approval from William E. Ryan, Chief, Narcotics and Dangerous Drugs Section, Criminal Division, United States Department of Justice, and the memorandum of authorization approved by the Attorney General of the United States, the Honorable Edward H. Levi.

3. This application seeks authorization to intercept wire communications between Jerra McCrea Lyles, alias Gerald, alias Gatorman, and others concerning offenses enumerated in Sections 841, 843 and 846 of Title 21, United States Code - that is, offenses involving the receiving, possession, distribution, buying and selling of illegal narcotic drugs and conspiracy to do so which have been committed and are being committed by Jerra McCrea Lyles, alias Gerald, alias Gatorman, and others.

4. He has discussed all the circumstances of these offenses with Special Agent William J. Miller of the Baltimore, Maryland Office of the Drug Enforcement Administration who has conducted the investigation herein and has examined the affidavit of Special Agent William J. Miller (attached to this application as Exhibit B, and incorporated by reference herein) which allege the facts therein in order to show that:

(a) There is probable cause to believe that Jerra McCrea Lyles, alias Gerald, alias Gatorman, and others, have committed, and are committing offenses involving the distribution and possession with intent to distribute of narcotics and conspiracy to do so, in violation of Sections 841 and 846 of Title 21, United States Code.

(b) There is probable cause to believe that wire communications concerning these offenses will be obtained through the interception, authorization for which is herein applied for. In particular, these wire communications will be between Jerra McCrea Lyles, alias Gerald, alias Gatorman, and his suppliers concerning: (1) the date, time, place and manner in which illegal narcotic drugs will be delivered to Jerra McCrea Lyles, alias Gerald, alias Gatorman, (2) the price Jerra McCrea Lyles, alias Gerald, alias Gatorman, is to pay for the illegal narcotic drugs and the date, time, place and manner of payment for said drugs. Also, these wire communications will be between Jerra McCrea Lyles, alias Gerald, alias Gatorman, and his customers concerning: (1) the date, time, place and manner in which Jerra McCrea Lyles, alias Gerald, alias Gatorman, will deliver illegal narcotic drugs

or cause narcotic drugs to be delivered to his buyers, and (2) the price Jerra McCrea Lyles, alias Gerald, alias Gatorman, is to receive for the narcotic drugs and the date, time, place and manner of payment for said drugs.

(c) Normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) There is probable cause to believe that the telephone listed in the name of Jerra McCrea Lyles, and located at 1213 North Ellwood Avenue, Baltimore City, Maryland, and carrying the telephone number (301) 675-5848 has been used, is being used and will be used, in connection with the commission of the offenses described above and is commonly used by Jerra McCrea Lyles, alias Gerald, alias Gatorman, and others as yet unknown.

5. No other application has been made to any Judge for authorization to intercept or for approval of interception of wire or oral communications involving any of the same persons, facilities or places specified herein.

WHEREFORE, your affiant believes that probable cause exists to believe that Jerra McCrea Lyles, alias Gerald, alias Gatorman, and others are engaged in the commission of the above described offenses, and that Jerra McCrea Lyles, alias Gerald, alias Gatorman, and others have used, and are using the telephone listed in the name of Jerra McCrea Lyles, located at 1213 North Ellwood Avenue, Baltimore, Maryland, and bearing the telephone number (301) 675-5848, in connection with the commission of those offenses, that communications concerning

those offenses will be intercepted to and from that telephone and that normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

On the basis of the allegations contained in this application and on the basis of the affidavit attached, affiant herewith requests this court to issue an order, pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, authorizing the Drug Enforcement Administration of the United States Department of Justice to intercept wire communications to and from the above-described telephone until communications are intercepted which reveal the details of the scheme which has been used by Jerra McCrea Lyles, alias Gerald, alias Gatorman and others, to receive, distribute, buy, sell and possess with intent to distribute illegal narcotic drugs, and the identity and role of his confederates, the places of operation, the nature of the conspiracy involved therein, or for a period of twenty-one (21) days from the date of that order, whichever is earlier.

Affiant further requests that this application, affidavit, and all exhibits filed in conjunction herewith be ordered sealed by the Court pending further order of this Court.

_____
Andrew Radding
Assistant United States
Attorney

Subscribed and sworn to
before me this___day of July, 1975.

_____
Judge, United States District Court

APPENDIX D

APPLICATION OF THE UNITED STATES OF AMERICA IN THE MATTER OF AN ORDER AUTHORIZING THE INSTALLATION OF A DEVICE TO REGISTER THE TELEPHONE NUMBERS CALLED FROM THE TELEPHONE NUMBER (301) 675-5848

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

APPLICATION OF THE UNITED STATES OF AMERICA IN THE MATTER OF AN ORDER AUTHORIZING THE INSTALLATION OF A DEVICE TO REGISTER THE TELEPHONE NUMBERS CALLED FROM THE TELEPHONE NUMBER (301) 675-5848	*	No.

* * * * * * * *

WILLIAM J. MILLER, being duly sworn, days:

1. I am a Special Agent of the Drug Enforcement Administration, United States Department of Justice, and a "law enforcement officer" within the meaning of Title 18, United States Code, Section 2510 (7). I am in charge of and fully familiar with the investigation pending in our Administration of the narcotic wholesale trafficking activities of Jerra McCrea Lyles, alias Gerald, alias Gatorman, and other persons unknown.

2. This affidavit is submitted in support of an application for an order authorizing the installation

of a device to register the telephone numbers called from the telephone number (301) 675-5848, subscribed to by Jerra McCrea Lyles, 1213 North Ellwood Avenue, Baltimore, Maryland, within the jurisdiction of the United States District Court for the District of Maryland. The type of communications sought to be intercepted are the details of a system of importation of illegal narcotic drugs into the Baltimore, Maryland area and the receiving, concealing, sale and distribution of these drugs throughout the Baltimore, Maryland area; and the dates, places and identities and roles of the persons involved in the commission of these offenses, in violation of Title 21, United States Code, Sections 846, 841 (a) (1) and 843 (b). The period for which the interception is sought is twenty-one (21) days in veiw of the complex and continuing nature of the system and the difficulties inidentifying its activity of major participants, as demonstrated by the facts set forth in this affidavit below.

3. The affidavit in support of this application with take the following form:

I. Jerra McCrea Lyles: The narcotic traffic of the subject of this investigation, dealing first with his general narcotic activity as revealed by sources and surveillance and then particularly with his use of the telephone (301) 675-5848 in order to transact this illegal business.

II. Long-distance Toll Record Information.

III. Unavailability of other means of investigation: The limited success and limited potential of other means of investigating this operation.

Sources of information who are confidential informants are referred to herein as Source 1, Source 2 and Source 3, respectively. Source 1, Source 2 and Source 3 are reliable informants.

Source 1 has testified in the District of Maryland against co-defendant Robert Clifton Stokes. Information supplied during the Stokes investigation was corroborated by independent sources and Source 1 subsequently assisted in the conviction of Stokes.

Source 1 was incarcerated at the time of his cooperation with the Drug Enforcement Administration (DEA). Source 1 was a partner of Robert Clifton Stokes who assisted Stokes in the distribution of his (Stokes') narcotics. Source 1 pled guilty to conspiracy to distribute heroin and subsequently testified against co-defendant Stokes. Source 1's testimony was not the basis of the Government's case, however, enhanced the case by corroborating the testimony of other witnesses. Source 1 had received five (5) years from the Court in the same case prior to his testimony against Stokes.

Source 2 has assisted DEA in developing the case against Lyles and several other important heroin traffickers. Source 2 has been equipped with a body transmitter device during his meetings with Lyles, and Source 2's conversations have been monitored by your affiant. Information provided by Source 2 has been corroborated by body transmitter device or independent source.

Source 3 has assisted DEA in the development of numerous cases in the Baltimore area resulting in the arrest and conviction of over 10 defendants and

the further development of investigations into major narcotics trafficking groups in the Baltimore area.

Source 3 was developed in 1971 and was instrumental in preparing cases against Norman Lee Coleman, James Ibbery Adams, Grafton Williams, June Tally, Leroy Allen and associates of these. The development of some of these cases resulted in major investigations in drug trafficking in Baltimore, New York, and Atlanta, Georgia. To this Source can be attributed the basis for the cases against the Maryland Legislator, James A. Scott, alias Turk, Edward Lee Tucker, and the developments in the Frank Matthews case in New York resulting in the indictments of Bernard Lee, alias James Wesley Carter, alias Brother. The cases of Scott, Tucker, and Lee are major interstate drug trafficking cases. Scott was murdered just prior to his scheduled trial; Tucker's trial was delayed after Tucker fled the jurisdiction. His heroin conspiracy case is now scheduled for September, 1975. He was convicted of failure to appear in May, 1975. Carter is scheduled for trial in New York for narcotics conspiracy during the summer of 1975. He is also waiting trial on narcotics charged in Baltimore.

I. Jerra McCrea Lyles

Jerra McCrea Lyles has been the subject of BNDD and DEA investigations since 1970. Over a period of at least five years active investigation Lyles has escaped conviction. Lyles has been arrested 11 times. Lyles was convicted of larceny in 1953, assault with a deadly weapon in 1958,

possession of a deadly weapon in 1960 and possession of heroin in 1964, for which he received 3 $\frac{1}{2}$ years of imprisonment. Lyles has not been convicted of any crime since 1964.

Since April, 1974, Lyles and his sources of supply have been the main subject of a DEA investigation involving Lyles' and his sources of supply's narcotics distribution system. Lyles resides at 1213 North Ellwood Avenue, Baltimore, Maryland, a private single family dwelling, brick row home in "East Baltimore". He subscribes to telephone number (301) 675-5848. A source of information, hereafter referred to a Source 1, developed by your affiant in August, 1974, indicated that he had, on occasion, purchased narcotics from Robert Clifton Stokes. In ordering the narcotics from Stokes, Source 1 stated that Stokes would contact Lyles by telephone in Source 1's presence and on one occasion Source 1 stated he observed Lyles bring a package of narcotics to Stokes on the corner of East Preston and North Washington Street immediately after Stokes had called Lyles by telephone.

In May, June and July, 1974, your affiant, while investigating the narcotic trafficking activities of Antoinette Dunn, learned from Dunn and her co-defendant, Cecilia Moore, that Dunn's paramour and source of supply was Jerra McCrea Lyles. Your affiant also learned from Dunn and Moore that Lyles on occasion co-habitated with Dunn at 4200 St. Georges Avenue, Apartment 7, Baltimore, Maryland. On numerous occasions your affiant telephonically contacted Dunn at telephone number

(301) 323-4305 (4200 St. Georges Avenue, Apartment 7) to transact narcotics business. On several occasions your affiant spoke with Lyles by telephone prior to negotiating narcotic business with Dunn. On one occasion in July, 1974, your affiant, after speaking to Lyles, asked Dunn "is everything cool with Jerra," meaning did he approve of the transaction. Dunn replied that it was.

In negotiations with Dunn, Dunn revealed to your affiant, acting in an undercover capacity, that her source of supply was "Gatorman" also referred to by Dunn and Moore as "Jerra" (Jerra Lyles) and that "Gatorman" "Jerra" was a large wholesale narcotics dealer who purchased kilogram quantities of narcotics. Dunn stated that Lyles was in the process (in May, 1974) of arranging the purchase of a kilogram of Methadone. She also stated that Lyles had operated for a long period of time without police detection and could afford to sell good quality heroin at low prices. Jerra Lyles was in Dunn's apartment at the time of Dunn's arrest by your affiant.

On May 8, 1975, another source of information, hereafter referred to as Source 2, was provided with 8 pounds of quinine hydrochloride, a cutting agent, by DEA. Source 2 then met with James Moore, alias Chicken Little, who subsequently took Source 2 to 1213 North Ellwood Avenue, where Lyles purchased the eight pounds of quinine hydrochloride from Source 2 for $3,500.00. Later on May 8, 1975, Lyles sold to Source 2 30.84 grams (net weight) of heroin from $1,800.00 Official Government Funds. This heroin was turned over to your affiant after the transaction. These meetings were

monitored and recorded by your affiant through the use of a body transmitter device placed on the person of Source 2 with his consent, and a remote receiver and recording device being operated by your affiant.

On May 9, 1975, Source 2 again met with James Moore, alias Chicken Little, at 2131 Koko Lane, Baltimore, Maryland. Upon arriving at Koko Lane, Source 2 advised that he requested Moore to contact Lyles in order to make sure that the narcotics would be ready and available for pick-up. Source 2 stated Moore immediately picked up the telephone and placed a telephone call. Source 2 was present when Moore placed the telephone call and heard Moore ask over the telephone if the narcotics were available. Moore also stated that he wanted "five" meaning five quarter ounces of heroin. At the termination of the conversation, Moore advised Source 2 that the narcotics were available from Lyles and that they would proceed to Lyles' residence. At Lyles' residence, Source 2 purchased from Jerra Lyles 22.266 grams (net weight) of heroin for $1,400.00 official Government Funds. Ther heroin was turned over to your affiant after the transaction. The purchase was again made utilizing a body transmitter and remote receiver-recording device operated by your affiant.

On June 19, 1975, Source 2 travelled directly to Lyles' residence, 1213 North Ellwood Avenue, Baltimore, Maryland, for the purpose of purchasing an eighth of a kilogram of heroin. The source had previously been equipped with a body transmitter device with his consent and provided with $6,800.00. Official Government Funds. Source 2 negotiated with and purchased from Lyles 146.18 grams (net

weight) of heroin for $6,000.00 Official Government Funds. The heroin was turned over to your affiant after the transaction. Towards the end of the negotiations, Lyles wrote his telephone number (301) 675-5848 on a piece of paper and handed it to Source 2. Lyles was overheard by your affiant to tell Source 2 to call him by telephone as soon as he wanted to order more narcotics. Lyles also advised Source 2 that if he had any problems with the narcotics to contact him because he only wanted "satisfied customers".

On June 25, 1975, at approximately 2:05 p.m. Source 2 contacted your affiant by telephone and advised that he had placed a telephone call to (301) 675-5848 as instructed by your affiant. Source 2 advised that he placed the telephone call to (301) 675-5848 at 1:55 p.m. on June 25, 1975, and spoke with Jerra Lyles. Source 2 recorded the conversation with Lyles and played it back for your affiant. In the conversation Source 2 told Lyles that the last "people" he sent him only went to "third street", he then repeated they only went to "third avenue". Lyles told the Source that he had told him that was what it was supposed to be. The Source then asked if Lyles could get him something better the next time. Lyles asked the Source when he was coming to Baltimore again and told the source that what he had gotten was the same as he had previously received. Lyles said he would wait and "see what I got". Lyles told the Source that he was glad he called and that he would look out for him and take care of him. General conversation ensued then the conversation was terminated.

In your affiant's experience of over four years with BNDD and DEA including the monitoring and

transcribing of two wire intercepts and numerous consensual wire recordings, your affiant has gained expertise in the methods of narcotics traffickers conversing on telephones. From your affiant's experience your affiant is acquainted with the substitutions of words and names for narcotics and the use of numerical streets to designate quality, weight and prices of narcotics. In this conversation Source 2 utilizes "people" to mean narcotics and referring to "only going to 'Third Street' or 'Third Avenue' " means that the narcotics could only be "cut" or diluted three times to yield a street level product. Lyles again stated over the telephone, as he had on June 19, 1975, in person, that the product was the same as the last, referring to Source 2's previous purchase, of May 9, 1975. Source 2 advised your affiant that by people, he meant heroin and by Third Street he meant the narcotics could be diluted three times. This conversation was intended by Source 2 to be a narcotic conversation, was fully participated in by Lyles and from your affiant's expertise was a narcotics conversations.

II. Long-Distance Toll Record Information

Toll records of the Chesapeake and Potomac Telephone Company are in the possession of your affiant for the period of January 24, 1975, through May 28, 1975, and are attached as Exhibit #1. These records indicate a total of 266 long distance calls placed from or charged collect to (301) 675-5848.

Telephone number (301) 675-5848 called telephone number (202) 635-0892 a total of two times between January 24, 1975, and February 14, 1975. Telephone number (202) 635-0892 is subscribed to by

Inez R. Arrendell at 13 S. Street, N.E., Washington, D.C. Arrendell is the sister of Charles William Ramsey. Ramsey actually resided at 13 S. Street, N.E., Washington, D.C., until his incarceration on February 14, 1975. This is substantiated by continuous surveillance by DEA and the execution of a search and seizure warrant at that location by DEA on February 14, 1974. Ramsey is a well-documented multi-kilogram dealer of heroin in the Washington, D.C., Maryland and Virginia area. On December 20, 1974, Ramsey was convicted in Washington, D.C. District Court of one count of Importation of Heroin, one count of possession with intent to distribute heroin and three counts of the use of communications facility in furtherance of a felony. Ramsey was sentenced on February 14, 1975, to 10-30 years imprisonment and is presently incarcerated. Ramsey was a key figure in the smuggling of heroin through West Germany and Thailand to Washington, D.C., and was ultimately apprehended through the use of a West German wire intercept. A review of the available toll records for (202) 635-0892 reveal 19 telephone calls to (301) 675-5848 during the period of January 18, 1974, to February 14, 1974, when Ramsey was receiving large shipments of heroin from Germany and Thailand. In the Ramsey investigation and subsequent trial in U.S. District Court, District of Columbia, it was developed that Ramsey was the United States distributor for large quantities of heroin shipped from West Germany and Thailand. This operation entailed the shipment of heroin to various addresses in Washington, D.C., Maryland and the State of Washington by the use of international and United States mail. Ramsey, as proven in this

investigation, was in constant intercontinental telephone communication with his overseas source, Sylvia Bailey. During the same period Ramsey was making arrangements with Bailey for shipments and deliveries of narcotics, utilizing (202) 635-0892, the same telephone was in constant communication with (301) 675-5848.

It was only through the use of a West German wire tap on Bailey's phone number (6021) 731 33, Aschaffenburg, West Germany, that Ramsey and the entire operation was exposed and stopped. Calls between (202) 635-0892 and (301) 675-5848 ceased after February 13, 1975, with the last call being from (301) 675-5848 to (202) 635-0892 on February 13, 1975. Ramsey is, from a review of toll information, a close associate of Lyles in the distribution of narcotics and from a tabulation of available toll records, Lyles and Ramsey were in constant telephone communication.

Telephone number (301) 776-4174 was called by (301) 675-5848 five times in February, Maryland, 1975. (301) 776-4174 was listed to George K. Bagby, 8765 Contee Road, Laurel, Maryland, and was disconnected on April 15, 1975. Bagby, according to telephone company records, had requested his telephone bill be sent to 1615 Hellby Street, Seaside, California. A review of Drug Abuse Law Enforcement (D.A.L.E.), Richmond, Virginia, files by your affiant reveals that George Kent Bagby, 1841 Nadine Street, Seaside, California, telephone number (408) 394-3602 was called by (804) 264-0665 subscribed to by Theodore Roosevelt Smith, 10703 Blue Bell Drive, Glen Allen, Virginia. Smith is described in D.A.L.E. reports as being a large supplier of heroin for the Richmond area. Smith

is described as supplying several major heroin dealers in Richmond area. Smith is the subject of DEA and Internal Revenue Service Investigation. Smith, with no visible means of income, has large amounts of United States currency and associates with convicted narcotic trafficker, Joseph Harmon. Investigation by the Federal Bureau of Investigation revealed that Smith deposited $18,000.00 in small bills in a Richmond bank in one day in 1972. The FBI initiated their investigation because of possible bank robbery implications, however, found there was none. The FBI did, however, learn that Smith also maintained another residence in Seaside, California, at 1649 Highland Avenue. Various informants (reliability unknown) in the Richmond area have described Smith as the source of supply for Joseph Harmon and other Richmond area heroin dealers. One source indicated that Smith received his heroin from California.

On July 22, 1974, Jerra McCrea Lyles was arrested by DEA along with Antoinette Dunn. Dunn was charged with two counts of distribution of heroin. On July 22, 1974, DEA agents went to 4200 St. Georges Road, Apartment 7, to arrest Dunn. Also present on the premises was Lyles. Lyles was arrested at that time on probable cause developed during the Dunn investigation. The probable cause is as follows:

Dunn, and co-defendant Moore, went to great lengths to describe to your affiant when in an undercover capacity their involvement with Lyles. Dunn and Moore in over four hours of conversation with your affiant, acting in an undercover capacity, described a narcotic transaction they were currently

involved in with Lyles, that is, the obtaining of a kilogram of methadone and various cutting materials to dilute the narcotics and package them for resale. Lyles, according to Dunn, was her boyfriend and normal source of supply. On several occasions your affiant spoke with Lyles on the telephone. On July 15, 1974, your affiant contacted (301) 323-4305 (Dunn's telephone) and spoke with Lyles. Your affiant gave to Lyles your affiant's undercover telephone number. On July 16, 1974, your affiant again called Dunn's phone (301) 323-4305 and Lyles answered. Your affiant then spoke with Dunn and negotiated for the purchase of 25 bundles (625 bags) of heroin for $3,125.00. During this conversation your affiant asked Dunn if "everything was cool with Jerra". Dunn replied that it was and that she could transact the deal with your affiant. When agents went to Dunn's residence, Lyles was present and it was felt Lyles, knowing himself to be Dunn's source, would flee if not arrested. Lyles was subsequently released after a determination was made with the United States Attorney's office that additional evidence would be needed to sustain a conviction of Lyles. Subsequently, Lyles was released and Dunn, Moore and Lyles were not charged with conspiracy pending further investigation. Lyles was subsequently released at the Baltimore Office of the Drug Enforcement Administration. In Lyles' possession at the time of his arrest was a number of papers with telephone numbers on them. One paper indicated the name Slim-Delaware (302) 764-2954, 114 West 30th Street, another paper indicated Slim Po and the numbers (313) 838-8876 (Detroit, Michigan), (302) 764-2954 (Wilmington, Delaware) and (212) 926-0981 (New York). Toll records of the C&P Telephone Company of Maryland indicated (302) 764-2954 was called by (301) 675-5848

two times while (301) 675-5848 called (313) 926-0981 three times. Telephone number (302) 764-2954 is subscribed to by James Porter of 114 W. 30th Street, Wilmington, Delaware. Porter is known in DEA intelligence files as a high level narcotic courier transporting multi-kilogram quantities of heroin and cocaine. Porter is described in the DEA files in Detroit, Michigan, as a narcotics courier. This information was obtained from a Detroit informant who's reliability is unknown. Porter, however, has been arrested for narcotics charges. On June 5, 1967, Porter and his wife were arrested by the New Jersey State Police while travelling on the New Jersey Turnpike. Porter was in possession of three ounces of cocaine at this time. Porter also was arrested in Jackson, Michigan, on June 30, 1959, for violation of drug laws and received 5-10 years of imprisonment. On February 25, 1972, Porter was arrested in New York City for possession of dangerous drugs. Porter is believed to have been involved in narcotic trafficking activities with George Harris, Leroy Collier and other major narcotic violators in the Detroit, Michigan area. Porter is believed to have operated as a courier in transporting large quantities of heroin and cocaine between Florida, New York and Detroit.

III. Unavailability of Other Methods of Investigation

All methods of investigation other than limited undercover penetration by one well-placed cooperating individual have proven insufficient in the past to identify and build successful prosecution against the major figures in the Lyles narcotics distribution system. Lyles has repeatedly refused to meet any narcotic

customer who he has not known and done narcotic business with for a period of years. On January 30, 1975, Lyles refused to deal with Source 2 because Source 2 attempted to bring another person (an undercover DEA agent) with him. Lyles apparently has selected narcotic customers and associates who, if arrested, will refuse to cooperate with the government and will refuse to divulge Lyles as their source of supply. Robert Clifton Stokes, known in DEA intelligence files and through Source 1 to be a "lieutenant" and close associate of Lyles has refused to divulge Lyles as his source. Antoinette Dunn and co-defendant Cecilia Moore, known to be closely associated with Lyles, also completely refused to cooperate with the government in furthering the investigation against Lyles. James Iberry Adams, identified by a very reliable source of information through that source's close association with Adams over a period of years, Source 3, as a distributor for and close associate of Lyles also refused to cooperate with the government. Although Stokes, Dunn and Adams have been arrested and convicted of narcotic trafficking in the District of Maryland, they have refused to divulge their source of supply who is known (as previously referred to in this affidavit) to be Jerra McCrea Lyles, nor have they identified any of Lyles' sources known to them. Thus Lyles has operated, untouched since his release from prison in 1966 and has continued to build a drug distribution ring.

Only one informant had been developed who has had any direct dealings with Lyles. This cooperating individual, Source 2, can only purchase narcotics from Lyles and is not in a position to infiltrate the Lyles organization or attempt to determine Lyles' source

of supply, major associates or customers without arousing much suspicion. This informant is not from Baltimore and is not in a position to be taken into Lyles' confidence. Thus far, Lyles has been very guarded in his conversations with Source 2. Your affiant has been a Special Agent to BNDD and DEA for over four years and has investigated over 100 cases involving violations of narcotics laws. It is your affiant's experience that narcotics dealers will not divulge their source of supply to customers for fear that they will be "cut out" or by-passed and the purchaser will buy directly from the source of supply.

Lyles' residence, 1213 North Ellwood Avenue, is in a densely populated black residential area with numerous bars located on corners surrounding the residence. Surveillance of this area is impossible due to the positioning of the residence and the fact that Lyles is a long time resident of this area and has numerous friends and associates who frequent the establishments throughout the immediate area. In addition to this, Lyles, being involved in narcotic activities for a number of years, has developed counter-surveillance driving techniques that inhibit any attempt at vehicular surveillance to the point of jeopardizing the investigation.

Lyles has been known to suspend direct narcotics dealing activities for a period of time if his suspicions become aroused by arrest of close associates, intense police investigation or surveillance. This has made Lyles an extremely difficult trafficker to deal with and has made it impossible for this Administration to identify Lyles' sources of supply and major associates. After a number of

years of investigation, this Administration has been unable to positively identify and develop a prosecutable case against Lyles' source of supply.

It has been your affiant's experience that any narcotic violator in Baltimore, Maryland, who is capable of producing an 1/8 kilogram of heroin with only several hours notice is very highly placed in the Baltimore narcotics traffic with source (s) of supply beyond the reach of conventional investigative procedure. It is felt that Lyles has at least one source of heroin outside the Baltimore area capable of providing large sized heroin shipment virtually on demand.

Your affiant, in being totally familiar with this investigation, has attempted during the length of his investigation, to utilize every possible investigative means available to a law enforcement agency in attempting to penetrate and immobilize the Lyles organization and Lyles' source (s) of supply. The first investigative means available is perhaps the infiltration into an organization by an undercover agent. This often times requres the development of a well-placed informant to introduce an agent to organization members to gain acceptance. In either case, Lyles has refused to accept anyone who he has not known, dealt with and trusted for a long period of time. In January, 1975, after over five years of investigation, DEA developed an informant from out of state who, although not familiar with the members and methods of the Lyles organization, did possess the proper credentials for acceptance by Lyles. This person, Source 2, had been selling quinine hydrochloride for a period of years through Hames Moore, alias Chicken Little,

to Lyles. Source 2 has a long time reputation in drug circles throughout the east coast as a large supplier of quinine, a preferred dilutent of heroin. It was with these credentials that Source 2 ultimately was able to talk directly to Lyles, then purchase heroin directly from Lyles. No DEA agent could ever gain a reputation such as this to further an investigation. In over a five year period, your affiant and other agents developed cases against customers and associates of Lyles; however, none with the exception of Source 2 would be willing to testify against Lyles or divulge Lyles' source(s) of supply, if they knew. Thus, development of a conspiracy type case is impossible. No person, including Source 2, can penetrate the Lyles organization to the point of discovering Lyles' couriers, source and means of distribution. The only other means of investigation available is surveillance. Surveillance of Lyles over a period of years has not developed Lyles' source(s) of supply and has only made Lyles more cautious. A lengthy surveillance of Lyles, in Lyles' neighborhood would not succeed due to the nature of the neighborhood. It is also your affiant's belief because of the intelligence and facts available in this affidavit that Lyles conducts numerous dealings, many of an interstate nature, by use of the telephone and that Lyles is in frequent telephonic communication with his source of supply, couriers, associates and customers.

The inability of available investigative means to learn of Lyles' methods and associates has made it impossible to determine Lyles' source(s) of supply. The purpose of any DEA investigation is to reach and develop a prosecutable case against the highest placed members and financiers of a drug organization. Effective immobilization of a drug distribution system

cannot be accomplised without cutting off the source and at the same time determining the methods and means of distribution. No means, with the exception of electronic surveillance is available to accomplish this purpose.

Unless electronic surveillance were instituted for number (301) 675-5848, further investigation of Lyl[illegible] and his organization could not progress. He could, at this point, be arrested; however, knowledge of his current source of supply, means of distribution and importation would be totally lacking.

I have not, nor has any one to my knowledge, made any previous application for the installation of a device to register the telephone numbers called from the telephone number (301) 675-5848. The West German Police instituted a wire intercept in Germany that revealed Charles William Ramsey as being the recipient of large quantities of heroin. As a result of this intercept, two kilograms of heroin were seized in Germany and one additional kilogram was seized as it was delivered in the United States to Ramsey. However, the incarceration of Ramsey has not curtailed the narcotics dealings of Lyles.

WHEREFORE, your affiant believes that probable cause exists to believe that Jerra McCrea Lyles and other persons are engaged in the commission of offenses involving the importation, receipt; concealment, sale and distribution of narcotics, and the conspiracy to do so; that Jerra McCrea Lyles used the premises 1213 North Ellwood Avenue, Baltimore, Maryland in this district and within the jurisdiction of this Court to conduct this activity; that he has used and will continue to use the telephone number (301) 675=5848 at this premises in the conduct

of this activity; that further communications concerning these offenses will take place over this telephone and will be obtained through the interception of these wire communications and the registration of telephone numbers called from (301) 675-5848; and that no other investigative procedures appear likely to succeed.

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William J. Miller
Special Agent
Drug Enforcement
Administration

Subscribed and sworn to before me
this _____day of July, 1975.

_____
Judge, United States District Court
District of Maryland